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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/288,238

04/08/99

DRIZEN

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HM12/1123

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EXAMINER

NATH AND ASSOCIATES
SUITE 750
1835 K STREET N W
WASHINGTON DC 20006

HARRISON, R

ART UNIT

PAPER NUMBER

1617

DATE MAILED:

8

11/23/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/288,238

Applicant(s)

Drizen et al

Examiner

Robert H. Harrison

Group Art Unit

1617



☒ Responsive to communication(s) filed on Sep 30, 1999

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 45-82 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☒ Claim(s) 71-82 is/are allowed.

☒ Claim(s) 45-70 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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Receipt is hereby acknowledged of applicants' amendment, Declaration and extension of time all filed as of September 30, 1999.

Applicants' arguments filed September 30, 1999 have been fully considered but they are not deemed to be persuasive.

Claims 45-70 remain rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 5,897,880. Please see the last Office action on page 3, such Office action being mailed as of June 28, 1999.

Claims 45-70 remain provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 35, 38-42 and 44-52 of copending application Serial No. 09/004,631. Please see the last Office action on page 4, such Office action being mailed as of June 28, 1999.

Applicants traverse, arguing that there is no issue of double patenting in the instant application. This argument is respectfully traversed for reasons stated already of record. With respect to applicants' argument that the patent claims are limited to certain nonionic polymers, this is clearly misplaced as the Examiner sees no such limitation in the independent claims and since only one claim is all that is necessary to require a double patenting rejection, this argument is clearly misplaced

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since all the patentee's claims do not limit to such polymers and even if this were the case, there still would be overlap between patentee's claims and the instant claims since the nonionic polymers clearly overlap between the instant claims and patentee's claims. While the Examiner agrees that the disclosure of a patent may not be used as prior art, applicants appear to be misplaced since the disclosure of the patent may be used as a dictionary. Such is what the Examiner relied upon, that is, the disclosure of the patent as a dictionary. As stated previously, since there is structural overlap between the pending claims and the issued claims, the Examiner sees no clear line of patentable demarcation in view of such overlap. This equally applies to the allowed claims.

Applicants' Rule 132 Declaration has been fully considered and is deemed to have the following effect. The prior art rejections are hereby withdrawn in view of such Rule 132 Declaration and/or applicants' remarks filed as of September 30, 1999.

Claims 71-82 are allowed.

Applicants' amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a). Applicants are reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a). The practice of automatically extending the shortened statutory period an